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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,395	07/23/2003	Luree Tobin		9818

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Matthew J. Peirce, Esq.  
Suite#1005  
330 S. 3rd Street  
Las Vegas, NV 89101

EXAMINER

FASTOVSKY, LEONID M

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/626,395

Applicant(s)

TOBIN, LUREE

Examiner

Leonid M Fastovsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/23/03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Payne, Jr. (5,891,189) in view of Kuo et al (5,148,002)

Payne teaches a heating band device 10 comprising an elastic band 26 having inner and outer surfaces, a battery 60 incorporated within the battery housing (col. 4, lines 44-47), and a heating coil 30 electronically connected to the battery. However, Payne does not teach a plurality of heating elements, a patch, an item of clothing, and is silent regarding means for opening and closing a battery compartment. Kuo discloses a garment 20 and a plurality of heating elements 20 and 22. Kuo also discloses a patch (module) 50 carried on a belt 52 and connected to the battery (Fig. 1A) and means for opening and closing a battery compartment (Fig. 8A). It would have been obvious to one having ordinary skill in the art to modify Payne's invention to include a patch (module) and means for opening and closing a battery compartment and a plurality of heating elements in order to provide heat to the garment as taught by Kuo (col. 5, lines 11-16).

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3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Payne in view of Kuo and further in view of Cole, III et al (5,973,603) and Jones, III (5,866,881). Payne in view of Kuo teaches substantially the claimed invention including a power light 178 located on the patch 50. However, Payne in view of Kuo does not teach a button to turn power on and off and on to one of three different levels, an audio element and a speaker. Jones discloses a button 60 with a dial 78 to turn power on and off and to one of three different levels, and Cole discloses an electronic speaker or electronic warning device located within the circuit 52 of a vest 50. It would have been obvious to one having ordinary skill in the art to modify the invention of Payne and Kuo to include a button in order to turn on and off and to one of three different levels to adjust the potentiometer as taught by Jones III (col. 6, lines 19-26), and to include an electronic warning device in order to monitor the temperature of the garment as taught by Cole III (col. 8, lines 31-48).

4. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Payne in view of Kuo, Cole and Jones and further in view of Bloodworth (6,329,638). Payne in view of Kuo, Cole and Jones teaches substantially the claimed invention, but does not teach a second battery compartment and a brassiere. Bloodworth discloses a heating vest system having two battery compartments (Fig. 2). It would have been obvious to one having ordinary skill in the art to modify the invention of Payne, Kuo, Cole and Jones to include a second battery pack in order to provide power for heat and

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vibration as taught by Bloodworth (col. 3, lines 44-66), and to incorporate the band in brassiere since a brassiere could be a part of the vest.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Payne in view of Kuo, Cole, Jones, Bloodworth and further in view of Sato (4,533,821).

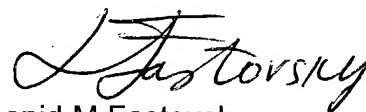
Payne in view of Kuo, Cole, Jones and Bloodworth discloses substantially the claimed invention, but does not disclose a band incorporated in a pair of shorts. Sato discloses a heating element 14 incorporated into pants 172. It would have been obvious to one having ordinary skill in the art to modify the invention of Payne, Kuo, Cole, Jones and Bloodworth to include pants (shorts) in order to warm a lower portion of the body as taught by Sato (col. 4, lines 40-49).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonid M Fastovsky whose telephone number is 703-306-5482. The examiner can normally be reached on M-Th. 8.00 am -6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Pothier can be reached on 703-308-0265. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leonid M Fastovsky  
Examiner  
Art Unit 3742

lmf